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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

In re HORIZON HEALTHCARE
SERVICES, INC. DATA BREACH
LITIGATION

Master Docket No. 13-cv-07418-
CCC-MF

**DEFENDANT HORIZON
HEALTHCARE SERVICES,
INC.'S RESPONSE TO
PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY**

Defendant Horizon Healthcare Services, Inc. respectfully responds to Plaintiffs' Notice of Supplemental Authority. ECF 103. Plaintiffs' citation to *Dieffenbach v. Barnes & Noble, Inc.*, 2018 WL 1737128, --- F.3d --- (7th Cir. Apr. 11, 2018) underscores why plaintiffs' complaint should be dismissed.

1. As Horizon's motion to dismiss makes clear, the law is uniform and unambiguous that plaintiffs' have failed to state a viable claim under the Fair Credit Report Act (FCRA). *Dieffenbach* does not concern or address FCRA and so does nothing to resuscitate plaintiffs' FCRA claims here. Plaintiffs' complaint can and should be dismissed on that basis alone.

2. Nor does *Dieffenbach* help plaintiffs with regard to their New Jersey state law claims, if and to the extent the Court determines to reach those claims. *Dieffenbach* concerns only the Seventh Circuit's application of peculiar California and Illinois state statutes. It says nothing about the New Jersey law that is at issue in this case.

3. If anything, *Dieffenbach* demonstrates that both it and this case will fail. The Seventh Circuit confined its decision solely to the narrow question of whether the plaintiffs had satisfied the state statutory "damage" or "injury" requirements. The Seventh Circuit then went out of its way to make clear its skepticism that plaintiffs could ever show that any statute had in fact been violated or that the case could ever be certified as a class action. *Dieffenbach*, 2018 WL

1737128, at *3.¹

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Respectfully submitted,

s/ David Jay

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¹ For all of the reasons set forth in Horizon's filings (ECF 70, 78, 80, 96), and at the motion hearing held on July 17, 2017, the motion to dismiss should be granted.